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IN THE

Supreme Court of the United States

October Term, 1948.
No. 334

JOHN HOWARD LAWSON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeal for the District of Columbia, on a Case Pending Before It Before Judgment Is Given in Said Court and Brief in Support Thereof.

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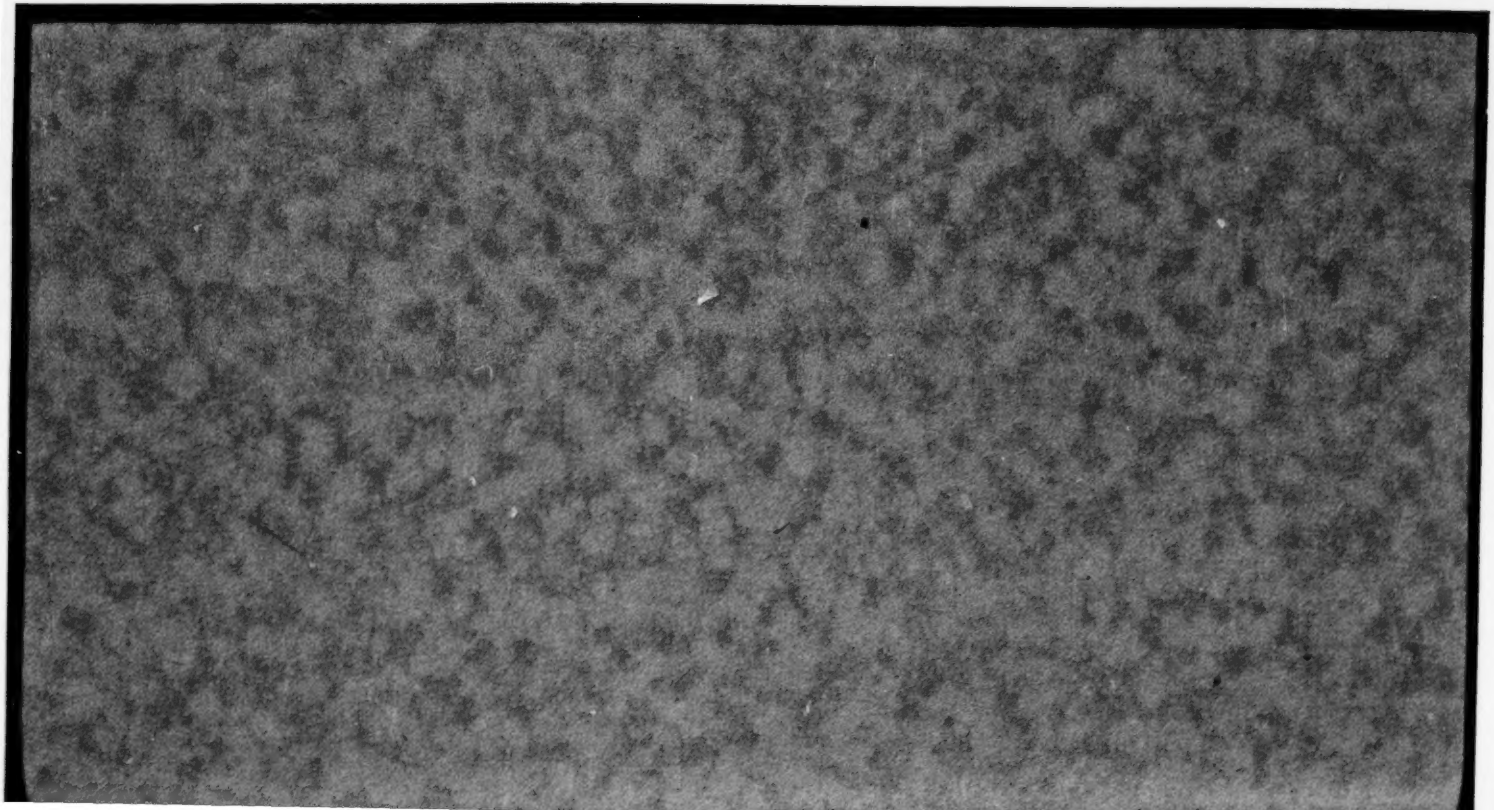

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Petition for Writ of Certiorari to the United States Court of Appeal for the District of Columbia, on a Case Pending Before It Before Judgment Is Given in Said Court.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, John Howard Lawson, prays that a Writ of Certiorari issue to review a judgment of the District Court of the United States, for the District of Columbia, rendered on May 21, 1948 [J. A. 44].*

*Pursuant to paragraph 7 of Supreme Court Rule 38, there are filed herewith copies of the joint appendix printed for use in the United States Court of Appeal, for the District of Columbia. References "J.A." are to pages of that printed record.

The petitioner was indicted under Rev. Stat., sec. 102, as amended by C. 594, Act of June 22, 1938, 52 Stat. 942, U. S. C. Title II, sec. 192 [J. A. 9]; was found guilty by a jury verdict on the 19th day of April, 1948 (624); and thereafter, on the 21st day of May, 1948, was sentenced to one year in jail and fined $1,000 [J. A. 44].

The petitioner perfected an appeal to the United States Court of Appeal, for the District of Columbia, which appeal (No. 9872) is now pending, the Opening Brief not yet having been filed [J. A. 2].

Statement of Matter Involved.

Petitioner was summoned as a witness by the House Committee on Un-American Activities (hereinafter referred to as "the Committee"), to give testimony at a hearing, the announced purpose of which was to investigate the alleged Communist infiltration of the Hollywood motion picture industry. He appeared before said Committee at its session within the District of Columbia on October 27, 1947. It is charged in the indictment that he refused to answer a question put to him by the Committee, namely, whether or not he was or ever has been a member of the Communist Party, which question, it is alleged, was a question pertinent to the matter under inquiry [J. A. 9].

The evidence before the trial court showed that, commencing on October 20, 1947, and continuing for about two weeks thereafter, the Committee held hearings in Washington, D. C. [J. A. 236-237].

There was a full week of hearings before the petitioner, John Howard Lawson, was called to the stand by the

Committee, during the course of which twenty-four witnesses friendly to the Committee testified, several of them stating that Lawson was a Communist or that they believed he was a Communist and attacking his political and professional integrity [J. A. 223-228, 230-232].

The petitioner testified before the Committee on Monday, October 27, 1947. After certain identifying questions, he was asked whether he was a member of the Screen Writers Guild, was questioned concerning his activities and offices held by him in the said Guild, and was asked to name the motion pictures for which he had written the scripts. Then came the question which is the basis of the indictment herein: "Are you now or have you ever been a member of the Communist Party?" Mr. Lawson answered by stating, as he had with respect to certain other questions, that the question violated his constitutional rights and that he challenged the motives of the Committee in asking it. He demanded that witnesses who testified during the previous week be recalled for cross-examination, so that it might be established that they perjured themselves. There was a running commentary between the chairman, the chief investigator of the Committee, and the members of the Committee, on the one hand, and the witness, John Howard Lawson, on the other, with the witness being repeatedly interrupted and finally being ordered to leave the stand and removed therefrom by officers, under the direction of the chairman [J. A. 197. See Appendix A to this Petition, setting forth the testimony in full, also J. A. 188-197].

During the course of his trial, the petitioner made a number of offers of proof, after government objections to appropriate questions had been sustained. All of said

offers were rejected. Among other things, the petitioner offered to prove the following:

(1) In May of 1947, the Committee held closed hearings in Los Angeles, at which time the Committee called upon heads of the motion picture industry to discharge certain writers, including Lawson.

(2) Later in 1947, but prior to the hearing in Washington, representatives of the Committee visited producers and executives of the motion picture industry and advised them that unless they got rid of Lawson and other writers whom the Committee deemed subversive, there would be trouble for the industry [J. A. 312-316, 336-338].

(3) During the course of the hearing in Washington, which commenced on October 20, 1947, members of the Committee repeatedly called upon and demanded that the motion picture producers discharge and blacklist employees who, according to the Committee standards, are un-American, subversive, or Communistic—among whom, according to the Committee, was the petitioner, John Howard Lawson.

(4) Immediately after the hearing, and in accordance with the Committee's demands, the motion picture producers discharged and blacklisted all of the ten witnesses cited for contempt, including petitioner Lawson.

The offer of proof showed that the Committee was demanding not only the discharge of members of the Communist Party, or persons whom it believed to be members of the Communist Party, but the removal of all "Communist influences" from the industry, by means of "cutting these people off the payroll." The Committee indicated that it considered its problem that "of eliminating the Communist element from not only the Hollywood scene

but also other scenes in America, and we have to have the full support and cooperation of the executives for each of these divisions." What the Committee meant by eliminating the Communist influences from the motion picture industry was indicated, for example, by the testimony of a witness praised by the Committee as being one of the world's outstanding experts on Communism, who laid down the following test for identifying Communists: (1) Attending any meeting at which Mr. Paul Robeson appeared, "and applauding or listening to his Communist songs in America"; (2) Belonging to a Communist-front organization—in other words, an association with Communists in it; (3) Making statements in opposition to the capitalist system.

The petitioner offered to show that one of the primary purposes of the hearing and of the question put to him was to impose censorship upon the motion picture industry, both as to the type of pictures it should and those it should not make.

One of the Committee's friendly witnesses underlined the effect of the earlier hearings when he pointed out, "It is very difficult to say right now (whether Communism is on the increase or on the decrease in Hollywood) within these last few months, because it has become unpopular and a little risky to say too much. You notice the difference. People who were quite eager to express their thoughts before begining to clam up more than they used to." [Exhibit 10 for identification, J. A. 257-260 and 480-545.]

The petitioner also offered to prove that during its entire existence the Committee had considered its authority sufficiently broad in scope to permit investigation and examination of every kind of organization, whether fra-

ternal, social, political, economic, or otherwise, and of every kind of propaganda, including limitless and unrestricted inquiry into any and all ideas, opinions, beliefs, and associations, of any and all individuals and organizations. In determining whether the investigation into the Hollywood motion picture industry should be made, hearings held, and questions put, the Committee interpreted and applied the resolution and rules under which it acted in accordance with that statement of its power.

The petitioner offered to prove in detail the manner in which the Committee defined and applied the term "un-American propaganda activity" and "subversive and un-American propaganda that . . . attacked the principles of the form of government as guaranteed by our Constitution"; and that the Committee conducted its Hollywood investigation, determined the pertinency of questions, and otherwise proceeded upon the basis that its authority was established by its own definition and application of the said terms. The petitioner offered to show that the Committee's concept of what is un-American and subversive runs the whole gamut of what are often denominated progressive ideas in American life, from support of the New Deal to opposition to the Committee on Un-American Activities; from opposition to monopoly to defense of sit-down strikes; from advocacy of the Geyer Anti-Poll Tax Bill to opposition to the method of choosing members of the legislature in New Jersey; from supporting, during the war, friendship with "our allies, the Russian people" to the belief that the government of Franco-Spain is not democratic; from a belief in absolute racial and social equality to signing a resolution in opposition to out-lawing of the Communist Party; from criticism of Congress to criticism of Chiang-Kai-Shek. With these premises as to

what constitutes un-American, subversive activity, the Committee has built up files containing names of more than a million individuals and more than a thousand organizations accused of being subversive. It has asserted that it functions as "the Grand Jury of America," as a "vigilante committee," and that it is a "democratic" substitute for the gestapo [Exhibit 9 for identification, J. A. 249-253 and 420-479].

The offer of proof also showed that both during the Hollywood hearings and at all other times, the Committee, while attempting to destroy individuals by blacklisting, character-assassination, and otherwise, has consistently denied the basic rights of confrontation and cross-examination of witnesses, effective aid of counsel, the right to produce evidence, and that the Committee at all times has assumed "guilt by association" and unqualifiedly accepted hearsay upon hearsay and unsubstantiated gossip [Exhibits 9 and 10 for identification, *supra*].

The petitioner was not allowed to prove that motions to quash the subpoenas and for cross-examination of witnesses were made on his behalf prior to and at the time he testified before the Committee and that they were denied by the Committee [J. A. 211-216, Exhibits 4, 5, 6, and 7 for identification, J. A. 394-411].

The trial court also refused to permit proof to the effect that there is nothing in the content of any American motion picture in any way subversive or un-American or any way justifying an inquiry by the Committee on Un-American Activities, and that this applies in particular to the pictures written by petitioner Lawson [J. A. 267-290, 309-311].

Prior to and at the outset of the trial, motions to transfer the case to another district for trial, on the ground

that District of Columbia juries contain many government employees and their relatives and that it was impossible to have a fair trial in this particular kind of case before such a jury, were made and denied [J. A. 13-25, 57].

A challenge and motion to dismiss the jury panel, on the ground that it was selected in a manner neither designed nor calculated to obtain a representative cross-section of the community, was also denied. The evidence presented in support of this motion established that, without any authorization therefor, the jury commissioner required all prospective jurors, as a condition of jury service, to answer the question, "Do you have any views opposed to the American form of government?" The jury commissioner likewise examined questionnaires filled out by prospective jurors with respect to penmanship, spelling, and form, to determine whether the person in question had sufficient intelligence to meet the jury commissioner's standards, rather than those established by law. In applying these tests, the jury commissioner took into consideration the occupations, past and present, of the prospective jurors, and even of their spouses, so that persons in the lower economic categories, whose penmanship or spelling the jury commissioners deemed inadequate, were disqualified while persons in the higher economic categories, with questionnaires having similar penmanship and spelling "deficiencies," were approved for jury service [J. A. 29-32, 57-98].

The only evidence to support the proposition that the petitioner appeared before a committee of Congress, as alleged in the indictment, was the testimony, admitted over objection, of Committee Chairman J. Parnell Thomas, to the effect that at the outset of the hearing he had stated,

"The record will show that a subcommittee is present, consisting of Mr. Vail, Mr. McDowell and Mr. Thomas." He was further permitted to say that under the law he, as chairman of the Committee, designates whether a full committee or a subcommittee shall sit and, in the latter event, who shall constitute the subcommittee; and that his above-quoted remarks, made at the outset of the hearing on October 27, 1947, constituted the designation of a subcommittee [J. A. 183-186, 197-198].

The foregoing is but the briefest outline of the evidence and of the offers of proof, the brevity being necessary because of limitation of space.

Statement as to Jurisdiction.

In the trial court, the jury returned a verdict of guilty on the 21st day of May, 1948 [J. A. 43]; the court denied a motion for a new trial on the 21st day of May, 1948 [J. A. 44-50] and sentence was imposed on the same day [J. A. 44]. Notice of appeal to the United States Court of Appeal for the District of Columbia was filed on the 21st day of May, 1948 [J. A. 2], and the matter is now pending in said Court.

The jurisdiction of this Court is based on the Act of June 25, 1948, c. 646 (62 Stats.....), U. S. C., Title 28, sec. 1254, subsection 1, which provides that a writ of certiorari may issue to the Court of Appeal of the District of Columbia "before or after rendition of judgment or decree," and upon Supreme Court Rules 38 and 39. See also *The Three Friends,* 166 U. S. 1.

This is the first of the now world-famous "Hollywood writers" contempt cases. Since those widely publicized hearings were held in Washington, D. C. during October, 1947, by the House Committee on Un-American Activities,

and the ensuing congressional contempt proceedings against ten prominent film writers and directors who allegedly refused to state their political memberships and beliefs, a great debate, international in scope, has raged over the constitutional question of the power of that House Committee to require a private citizen to disclose his particular political belief or political membership, under pain of criminal and economic penalties.

Numerous editorials, articles, and comments have appeared and are constantly appearing in the press, over the radio, in law journals, and in various periodicals; powerful instrumentalities for the formulation of public opinion have challenged the constitutionality of the Committee's action.[1]

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[1]Examples of the debate are:

New York Times, October 23, 1947.

"In the course now being followed in Washington there are, we believe, three evident dangers. First, it is clear that the Committee on Un-American Activities is actually trying certain individuals for alleged subversive and un-American acts without affording them the ordinary rights accorded to the most degraded criminal; namely, the right to cross-examine their accusers and the right to call witnesses on their own behalf. Second, there is an obvious danger that the present investigation, as it is now being conducted, may succeed in identifying as 'communist' any element of criticism or protest in the films against any aspect of American political, social or economic life; if this happens, and the investigation creates fear in Hollywood, which has often been accused of timidity in dealing with public questions, then the screen is consigned to mere entertainment on the most trifling of premises. Finally, an investigation of this kind, once begun, has no ready stopping-place. One of the Government's witnesses has already declared that Broadway is worse than Hollywood in the matter of Communist penetration, and that the reading departments of the publishing houses are 'very, very heavily infiltrated with Communists.' Are we now to go on from Hollywood to Broadway, and then from Broadway to the publishing houses, searching for suspects all along the line, and after that carry the hunt into the radio and then into the American press? That would be a wholly logical procedure, on the premise the Congressional committee has adopted."

Citizens everywhere are deeply and gravely concerned with the problem presented by this case, for the Constitution, its meaning, and its pervasive influence upon our democratic way of life are directly drawn into question. Educators, clergymen, congressmen, and others have all expressed their abiding concern with, and their doubts respecting the existence of, any such congressional power as was here asserted by this Committee and later approved by the trial court below.

The legal questions in this case go to the very vitals of our constitutional form of government, and they have never been directly decided.

Today further investigation of the motion picture industry and extension of the area of investigation into the

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Des Moines Register, October 23, 1947.

"THEY WOULD SHACKLE OUR RIGHT TO THINK.

". . . What these reactionaries and others of the country and of congress seem bent upon doing is to put the thinking and the writing and the performing at Hollywood in such narrow intellectual shackles that no view can possibly be expressed except those which accord with the deadening dogmas and timid mentalities of the most reactionary fringe. This hounding of bold, challenging ideas out of the arts is in the same pattern as our current hounding out of government of anyone who is not the most subservient conformist.

"American democracy cannot be saved that way. American democracy is not even served by these practices. It is stultified instead. It is corrupted and made tawdry."

Atlanta, Georgia, Journal—October 28, 1947.

"On Monday a film writer, John Howard Lawson, was cited for contempt after having refused to answer the question: 'Are you now and have you ever been a member of the Communist Party?' He had demanded, and had been refused, the right to read a statement in which he called the proceedings '. . . an illegal and indecent trial of American citizens.' Evidence that Mr. Lawson is a Communist Party member was read into the record, and that was that.

"Whether Mr. Lawson is or is not a Red does not affect the main point at issue. He is an American citizen, and, as such,

"legitimate" Broadway theater, the radio industry, the book-publishing business, the churches, schools, and the fields of science, are being threatened by this Committee. The extent of the power of the Committee over these media of expression and opinion, and the nature of the duties and the constitutional rights of the citizens called as witnesses by that Committee, should be determined promptly to prevent further damage to those institutions and to those individuals. This determination can be made in this case by this Court. Without a decision by this Court in this case, neither the Congress nor the numerous American citizens who will not willingly permit invasion of their constitutional rights, but whose very existence as free men is threatened now by this Committee, have any

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enjoys the rights and privileges guaranteed under the Bill of Rights. His political beliefs, so long as they are not actionable under the laws affecting treason, are his own business. The majority of Americans, who hate to see Communists sheltered by the freedom-inspired provisions of the very Constitution which they would destroy, cannot be reminded too often that the principles of free speech and free press are meaningless unless they apply to people who disagree with the government.

"Then why not outlaw the Communists and be done with it, once and for all? The answer is, of course, that the drawing up and passage of a law which forbade Americans from holding certain political beliefs would be a dangerous, perhaps a fatal, departure from the basic concepts upon which this country was founded.

"This is the way the *New York Herald Tribune,* one of America's great conservative newspapers, comments upon the Hollywood probe:

" 'There are, without doubt, circumstances under which such an investigation as this one would be proper. If the moving pictures were undermining the American form of government and menacing it by their content, it might become the duty of Congress to ferret out the responsible persons. But clearly this is not the case—not even the committee's witnesses are willing to make so fantastic a charge. And since no such danger exists, the beliefs of men and women who write for the screen are, like the beliefs of any ordinary men and women, nobody's business but their own, as the Bill of Rights mentions. Neither Mr. Thomas nor the Congress in which he sits is empowered to dictate what Americans shall think . . .' "

constitutional, final, authoritative guidance as to the limits of the power to inquire and of the duty to respond.

During the month of September, 1948, the President of the United States was required publicly to declare that the House Committee on Un-American Activities, by its allegedly unlimited power of investigation, has created such a "totalitarian climate" that the nation's atomic research program is being retarded; that scientists—out of fear of this Committee's asserted powers of inquiry into their beliefs and associations—were refusing to continue to work on government-sponsored atomic energy projects. Thus, the matter vitally affects the internal and external relations of our entire nation, and demands the exercise by this Court of its power to bring this appeal before it directly (see *Forsyth v. Hammond,* 166 U. S., at pp. 515-517).

Students of a later generation may be aided by a belated decision on the case by this Supreme Court. This is also important. But it is far more important to the living, haunted by the spectre of this asserted unlimited congressional power, that the question be resolved by the Supreme Court now.[2]

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[2]There is also pending in the United States Court of Appeal, for the District of Columbia, the case of *Dalton Trumbo v. United States of America,* No. 9873, involving the same questions that are raised here, and similar questions relating to compulsory disclosure of trade union affiliation. Because of the similarity in the issues, and in order to avoid an unnecessary burden on this Court, no separate Petition is being filed in the *Trumbo* case; however, if this Petition is granted, this Court will be requested to consider this companion case at the same time.

The principal rulings of the trial court out of which arise the questions here presented are as follows:

(1) The Court denied a motion to dismiss the indictment, holding that the statute and resolution under which the Committee acted was constitutional and that the indictment stated a public offense [J. A. 11, 6].

(2) The Court ruled, as a matter of law, that the question put by the Committee to petitioner concerning his political beliefs was a pertinent question and that it was his duty to answer [J. A. 355].

(3) After sustaining objection to appropriate questions, the Court rejected an offer of proof of facts showing that the Committee so conducted its hearings as to effectuate its purposes of having the petitioner discharged and blacklisted in the motion picture industry and of imposing censorship upon the motion picture screen; that in so doing, the Committee was acting pursuant to its interpretation and application of Public Law No. 601, Sec. 121, of the 79th Congress, House Resolution 5 of the House of Representatives of the United States, 80th Congress, dated January 3, 1947, pursuant to which it purported to act, and that it construed and applied such statute as authorizing it to conduct limitless and unrestricted inquiry into any and all ideas, opinions, beliefs, and associations of any and all individuals and organizations; that the said Committee applied and construed in the said hearing the statute and resolution pursuant to which it acted in such a manner that practically every progressive idea or activity was un-American and subversive [Exhibits 9 and 10 for identification; J. A. 208-210, 249-254, 256-260, 420-545].

(4) After sustaining objections to appropriate questions, the Court rejected an offer of proof that the pro-

cedure followed by the Committee denied to petitioner such basic requirement of procedural due process as the right of counsel, the right to cross-examination, etc. [Exhibits 9 and 10 for identification, *supra*].

(5) After sustaining objections to appropriate questions, the Court rejected an offer of proof of facts showing that there was nothing in the content of any American motion picture which by any definition could be classified as un-American or subversive, and that, therefore, there was no danger, clear or present or otherwise, which to any extent justified the investigation of the motion picture industry [J. A. 266-290].

(6) Over objection, the Court admitted evidence by the chairman of the Committee that, as a matter of law, he had the power to appoint subcommittees and that he appointed the subcommittee which heard the testimony of the petitioner, by stating at the outset of the hearing that a subcommittee was sitting [J. A. 183-6].

(7) The Court instructed the jury that a non-responsive reply or an unclear reply constituted, *per se*, conclusive proof of a refusal to answer [J. A. 358-9].

(8) After sustaining objections to appropriate questions, the Court denied an offer of proof that at the time Congress voted the contempt citation against the petitioner, it did not have before it, and had not had before it, the complete record of the Committee proceedings, relating to the petitioner, out of which the alleged contempt arose [J. A. 302-5; Defendant's Exhibits for identification 4, 5, 6 and 7, J. A. 394-411].

(9) The trial court denied a motion for change of venue and challenges to jurors who were governmental employees, despite affidavits showing that it was impossible

for petitioner to have a fair trial in the District of Columbia before a jury composed in all or in part of government employees [J. A. 57, 13-24].

(10) The trial court denied a motion to quash the jury panel, despite proof that the panel from which the trial jury was selected had prescribed for it a test of political orthodoxy, contrary to statute, and that in the choosing of the jury panel, the jury commissioner set up standards other than those established by statute, discriminated against persons in the lower economic groups, and selected the panel in a manner not calculated to obtain a representative cross-section of the community [J. A. 57-98].

(11) The Court committed prejudicial error in its comment to the jury and its rulings on the admission of evidence and on cross-examination, which will be referred to more specifically in the statement of questions presented and the short brief in support of this Petition.

Statutes Involved.

The statutes involved are Rev. Stat., Sec. 102, as amended by Chap. 594, Act of June 22, 1938, 52 Stat. 942, U. S. C., Title 2, Sec. 192; Public Law No. 601, Sec. 121, of the 79th Congress, House Resolution 5 of the House of Representatives of the United States, 80th Congress, dated January 3, 1947; Title 11, Sec. 1417, of the Code for the District of Columbia.

The text of these statutes are set forth in the Appendix to this Petition.

Questions Presented.

(1) Did the question put to petitioner concerning his political affiliation and the ruling of the Court that the Committee had the power to compel him to answer, and the resultant conviction for failure to answer, violate any constitutional rights of petitioner, under the First, Fourth, Fifth, Ninth and Tenth Amendments, to be protected from compulsory disclosure of his beliefs and associations?

(2) Under the present Immunity Act applicable to witnesses testifying before congressional committees, has Congress provided immunity to witnesses sufficient to meet the standards of completeness required by the Fifth Amendment to the Constitution, in order to compel oral testimony before such committees?

(3) Did the Committee deny petitioner due process of law, by, as petitioner offered to prove, so conducting its hearings as to accomplish its purposes of interfering with his right to work and otherwise injuring him, in the absence of any law providing for such punishment or deprivation; and by so conducting its said hearings as to deny to petitioner the basic requirements of a fair hearing; and, if so, could the petitioner be compelled to answer the very question upon the basis of which the Committee sought to, and did, deprive him of his rights, without due process of law?

(4) Did the Committee, in this particular inquiry into alleged subversive influences in the Hollywood motion picture industry, act in excess of the bounds of its lawful

power by pursuing a non-legislative purpose, if, as petitioner offered to prove, the primary purpose of the Committee which was effectuated through the hearing, was to blacklist petitioner, among others in the motion picture industry, and to censor the screen by dictating to the film producers both the contents of films to be made by them and the political qualifications of the personnel to be employed in the production of motion pictures?

(5) Did the Committee, in seeking to compel petitioner to answer a question regarding his political affiliation, act beyond the scope of its legislative power and infringe upon the area of government reserved to the people by the Ninth and Tenth Amendments?

(6) Did the Committee invade the area of government delegated to the judiciary by Article III of the Constitution by, as petitioner offered to prove, using its hearings for the purpose of seeking to establish the alleged political affiliation of petitioner and to penalize him therefor?

(7) Does the statute creating the House Committee on Un-American Activities, on its face, and as construed and applied, so invade the domain of conscience, belief, and expression of belief that it violates the Bill of Rights and particularly the First Amendment?

(8) Are the words, "subversive" and "un-American," being the salient terms of the said statute, so ambiguous as to render it void as a penal statute?

(9) Did the Committee lack jurisdiction for inquiry within the area of the First Amendment into the motion

picture industry because, as petitioner offered to prove, there was no clear and present danger to the safety of the nation or, in fact, any danger, which warranted such investigation?

(10) Did the evidence submitted by the government warrant the trial judge's instructions to the jury that the question put to petitioner, as recited in the indictment, was a pertinent question which petitioner was required to answer?

(11) Is, as the trial judge instructed the jury, a non-responsive reply or an unclear reply conclusive proof of refusal to answer, within the meaning of Rev. Stat., Sec. 102, as amended by Chap. 594, Act of June 22, 1938, 52 Stat. 942, U. S. C., Title 2, Sec. 192?

(12) Did the trial court commit prejudicial error in ruling that a validly constituted subcommittee was in attendance at the time that petitioner was sworn and testified, and that, as a matter of law, the chairman of the House Committee on Un-American Activities had inherent power and authority to appoint such a subcommittee; in failing to charge that the government must prove beyond a reasonable doubt, as an essential element of its case, that a validly constituted subcommittee was in attendance at the time petitioner was sworn and testified; and in quashing petitioner's subpoena *duces tecum* for the written Minutes of the Committee relating to the manner in which the subcommittee had been appointed and the authority for such appointment?

(13) Did the trial court commit prejudicial error in excluding petitioner's evidence that the Committee failed to certify to the House of Representatives all of the facts relating to his alleged failure to answer an allegedly pertinent question?

(14) In view of the proof relating to the establishment by the Jury Commission of the District of Columbia of tests of political orthodoxy for jury service and relating to the selection of the trial jury panel in a manner contrary to statute and not calculated to achieve a representative cross-section of the community, should petitioner's challenge and motion to dismiss the jury panel have been granted?

(15) Should petitioner's motion to transfer the trial from the District of Columbia have been granted, in the light of the showing in support of his contention that he could not have a fair trial before a jury composed, in whole or in part, of government employees?

(16) Did the trial court commit prejudicial error by refusing to allow the widest latitude for inquiry into the existence of actual bias on the part of government-employee jurors, by the method employed over objection in impanelling the jury, by denying petitioner's challenges for cause directed to government employees, and by the refusal to grant petitioner additional peremptory challenges?

(17) Did the trial court invade the province of the jury and commit prejudicial error by its comments during the course of the defense argument to the jury?

(18) Did the trial court commit prejudicial error in refusing to permit reasonable cross-examination of the principal prosecution witness, J. Parnell Thomas?

(19) Did the trial judge commit prejudicial error in denying petitioner's motion to disqualify him upon the grounds of bias and prejudice?

Respectfully submitted,

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IN THE

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No. .....

JOHN HOWARD LAWSON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

BRIEF IN SUPPORT OF PETITION.

This petition is addressed to the Supreme Court in the conviction that the delay of the usual practice would occasion serious injury to the nation, would leave numerous critical questions of law unsettled, and would needlessly jeopardize the livelihood and reputations of many admittedly innocent citizens.

We respectfully submit that the precise questions presented by the case below, though long decided in principle in favor of petitioner's contentions, have never within the framework of the facts of this case, or any other contempt matter, been presented to this Court and have never been authoritatively settled.

We urge that the questions presented are among the most important to reach this Court in a generation. Con-

scious of the breadth of such a statement, we nevertheless believe that the decision to be rendered in this case will largely influence, if not determine, the course of our Republic. Stated in its simplest terms, the case involves inquisition by means of compulsory disclosure, carried on by a Congressional Committee for the purpose of ferreting out political dissenters, and the imposition by the Committee of severe penalties for dissent. On the decision in this case may well depend the nature of our future society, whether the time has come to abandon principles long established or whether the time is now here to reassert those principles.

In the few years during which the practices of this Committee have continued, dozens of men and women have been directly and irremediably injured. But the consequences go far beyond the persons who have been summoned to appear as witnesses. The threat voiced by this practice reaches into the places where people assemble to speak and to hear, into the classroom, into the laboratory, and into the study of the scholar. It guides the hand that writes the press release, it is heard in the inflections of the radio commentator, and it is printed in the textbooks given to children. By and large the intellectual life of our country takes on new form, a form marked by this practice. The processes of judgment and of criticism are affected by the standards which this Committee promulgates over its official seal of what is right and what is American. The moral life of the individual is charged with new tensions, with drafts on courage, with old principles biased either by fear of the Committee or by a challenge to it. Political publication runs the gauntlet of a new imprimatur. Criticism of fundamentals, on the points that really matter, becomes an expedition into an armed camp.

The Committee which carries on this practice purports to do so under color of authority, an authority which, it urges, is given to it by the Constitution. It is this contention that poses the question for the Court. If this Constitution, written by men acutely sensitive to the iniquities of the writs of assistance and of test-oaths, should contain authority for such procedure it would indeed be a self-annihilating document. But, as the contention is made on behalf of one of the great branches of our Government, it can and should be finally examined by this Court.

The inquisitorial procedures inflicted by the Committee were only a part of the whole. In the very hearing chambers, members of the Committee, purporting to sit as an official body of the United States Government, directed private employers to discharge and blacklist witnesses whom the Committee had subpoenaed. The standards for determination, the trial, and the punishment came from that one body, without opportunity for intervention by any other authority. No organ of our Government, unless perhaps a military tribunal within sound of battle, has laid claim to such powers. And this Court has not determined the question before.

It is true that the powers of this Committee to issue subpoenas and to swear witnesses has been passed on by intermediate appellate courts. But this Court has yet to declare whether this Committee in this particular hearing acted for legislative ends; whether it has a right to compel disclosure of political affiliation when in the same hearing it employs the full resources of its power to inflict disaster, on the basis of the information requested; and whether that ultimate sanctuary, the mind of a man, may lawfully be invaded by temporal writ to expose dissent.

This phenomenon is not an incident; it is not merely a thing which happened on a day in October, 1947, though it is that, too. It is a practice which professes to become an institution. It continues. More hearings have been held; more have been announced. Meanwhile the effect multiplies, the atmosphere compounds, and where yesterday challenge demanded courage, tomorrow it may require martyrdom. Although too much time has already gone by, the brake which only this Court can apply would be more effective now, more calmly received, than it would be later. Who can say whether the *Korematsu* case (322 U. S. 214) was more than a judicial bow to a *fait accompli,* whether if the Court had acted sooner the repulsive necessity which brought the decision might have been found less compelling? *Ex parte Milligan,* 4 Wall. 2, decided an abstract question; the prisoners had become broken men, and confidence in the writ of habeas corpus was justly undermined; the Court had waited too long.

Briefly the argument on the merits may be summarized:

One of the purposes of the First, Fourth, Fifth, Ninth and Tenth Amendments was to establish an absolute privilege with respect to private beliefs, extending into the area of politics as well as that of religion. *U. S. v. Lovett,* 328 U. S. 303, 321, 323; "The History and Development of the Fourth Amendment to the Constitution" by Nelson B. Lasson (1937), pp. 13-14, 43-46, 58-59; *Coffin v. U. S.,* 156 U. S. 433; "A History of the Inquisition of the Middle Ages," I, p. 407, by Henry Charles Lea; R. Carter Pittman, "The Colonial and Constitutional History of the Privilege Against Self-Incrimination"; 21 Va. L. R. 763, 783; *Adamson v. Calif.,* 332 U. S. 46, 88; *Harrison v. Evans,* 1 Eng. R. 1437 (1767); "The scope of the Constitutional Immunity" by John E. F.

Wood, W. Va. L. Q., Vol. 34, No. 1 (December 1927), pp. 2, 4; Elliott's "Debate," III, pp. 445-449; *Respublica v. Gill,* 3 Yeates 429, discussed in *Brown v. Walker,* 161 U. S. 591, 633; *Cummings v. Mo.,* 4 Wall. 277, at 330; Rep. Jenkins, Congressional Globe, 29th Cong., 1st sess., 1845-1846, p. 455. Because the right to hold beliefs is meaningless unless the beliefs held can be expressed through association, the privilege extends to freedom of association. *Thomas v. Collins,* 323 U. S. 516, 530; de Tocqueville, "Democracy in America" (N. Y. 1946), Vol. I, p. 196. Being absolutely privileged, an individual's beliefs, as well as his associations for the purpose of expressing them, are immune from compulsory disclosure, just as he is exempt from punishment by fine or imprisonment for possessing them. *Local 309 UFWA (CIO) v. Gates, Governor of Indiana,* 75 Fed. Supp. 62; *Millar v. Taylor,* 4 Burr 2379 (1769); Samuel B. Warren and Louis V. Brandeis, "The Right to Privacy," 4 Harvard Law Review, 193, 196; Lasson, *supra,* p. 133.

The Committee, by insisting that the petitioner disclose his political affiliation, invaded the privileged area and, therefore, its inquisitorial efforts may not be sanctioned by a court of law. *Thomas v. Collins, supra; Lasson, supra,* pp. 108-110; *Wood, supra,* pp. 13-14; *Mayer v. Nebraska,* 262 U. S. 390, 399; *United States v. Bell,* 81 Fed. Rep. 830, 836 *et seq.;* 24th Cong., 2nd sess., Debates, Vol. XIII App., pp. 199, 200, 202.

Just as Courts have functioned effectively within the framework of our democratic tradition and the limitations of the Fourth and Fifth Amendments, without requiring defendants to testify against themselves or using evidence unlawfully obtained, so legislative committees can obtain the information necessary for legislative purposes without

compelling individuals to disclose their political beliefs and affiliations and to subject themselves to penalties because of such testimony. The necessity for legislative committees to obtain such information is no greater than the necessity for Courts to require forced confessions, and the legislature has the additional advantage of being able to use secondary evidence for its purposes. (*Wigmore on Evidence,* 3rd Ed., Vol. 8, p. 161.)

The encroachment upon individual rights is magnified by the fact that Congress has not provided, for witnesses before congressional committees, immunity sufficient to meet the prerequisites necessary to compel a witness to testify concerning his acts, let alone concerning his beliefs and associations. *Counselman v. Hitchcock,* 142 U. S. 547; *United States v. Shapiro,* 92 L. Ed. Adv. Op. 1424; Eberling, "Congressional Investigation" (N. Y. 1928), pp. 228, 339, 404 *et seq.;* "Encyclopedia of the Social Sciences, Vol. V, p. 252; *Brown v. Walker, supra; United States v. Bell, supra.*

The Committee utilized its powers to have the petitioner discharged from his employment and blacklisted in the industry in which he had earned an enviable, worldwide reputation, and to deprive him of other valuable rights protected by the due process clause of the Fifth Amendment.[1]

This was done without any provision of law authorizing it. Moreover, the very question which is the basis of the proceedings herein was designed to assist the Committee in achieving its illegal objectives. No man may be held in

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[1]If the matters which petitioner offered to prove should have been allowed, the case must be reversed. For this reason, and because of limitations of space, the matters which petitioner offered to prove are considered as having been proved, for the purposes of this brief.

contempt for refusing to testify in a proceeding in which, without authorization of law, his most valuable property rights and personal liberties are being attacked and taken away from him. *Allgeyer v. Louisiana,* 165 U. S. 578; *United States v. Lovett,* 228 U. S. 303; Mott, "Due Process of Law" (1926), pp. 9, 12, 37, 86, 108, 115-16, 126, 132-3, 135, 142, 159-60; 39th Section of Magna Carta (sometimes miscited as 29th Section); *United States v. Trierweiler,* 52 Fed. Supp. 4; *United States v. Classic,* 213 U. S. 299; *Screws v. United States,* 325 U. S. 91; *United States v. Stone,* 188 Fed. 836; *United States v. Waddell,* 112 U. S. 80; *Hill v. Wallace,* 259 U. S. 44; *Stewart Mach. Co. v. Davin,* 201 U. S. 548; *United States v. Constantine,* 296 U. S. 287; *Kilbourne v. Thompson,* 103 U. S. 182. To this is added the fact that the most elementary requirements of fair play essential to due process were denied to petitioner in these proceedings, which were calculated to cause, and actually resulted in, such great and irreparable injury to him. The conclusion is thus reinforced that the proceedings, in which the petitioner was charged with having refused to answer a question, so invaded his constitutional liberties as to render them void. McGeary, "The Development of Congressional Investigative Power" (1940 N. Y.), pp. 80, 81; *Bi-Metallic Co. v. Colorado,* 239 U. S. 441; *Morgan v. United States,* 304 U. S. 1; *Tot v. United States,* 319 U. S. 463, 472; *Carsten v. Pillsbury,* 172 Cal. 572, 577; *United States v. Lovett,* 328 U. S. 303, 310-316; *In re Oliver,* 92 L. Ed. Adv. Op. 503, 505. Void proceedings may not constitute a valid basis for a contempt charge.

Thus far, there has been summarized the respects in which the Committee's conduct invaded the constitutional rights of petitioner. That the Committee's conduct was

illegal is also apparent when it is considered from the standpoint of the powers of legislative committees.

The blacklisting and discharging of individuals, the imposition of censorship upon the screen, and the dictation to the motion picture industry of the political qualifications of personnel employed therein were the purposes of the Committee in conducting its hearings. These objectives were effectuated under the guise of a legislative inquiry and by means of an unwarranted invasion of the private rights of private individuals and private institutions. Thus, the Committee pursued non-legislative purposes. Refusal to answer a question in a proceeding in which legislative power is so exceeded cannot be contempt. *McGrain v. Daugherty,* 273 U. S. 135; *United States v. Olmstead,* 277 U. S. 479; *United States v. Boyd,* 116 U. S. 616; *People v. Barnes,* 204 N. Y. 125; *Ex parte Hague,* 150 Atl. 322; *People v. Webb,* 5 N. Y. S. 855; *Sinclair v. United States,* 279 U. S. 288.

The conduct of this Committee undermines the very foundations of this nation's democratic institutions. Ours is a government of delegated powers, with the people reserving and exercising the powers of the sovereign. *Ninth and Tenth Amendments.* The delegated powers are conferred upon the three distinct branches of the federal government, with each independent of the others. Under the doctrine of separation of powers, which arises out of the central premise that each branch of government is independent, no branch of the government may directly or indirectly attempt to control or interfere with the exercise of powers delegated to other branches. *O'Donoghue v. United States,* 289 U. S. 516; *Humphries Executors v. United States,* 295 U. S. 602; *Bailey v. Drexel Furniture*

Co., 259 U. S. 20; *United States v. Owlett*, 15 Fed. Supp. 736.

If the people are to retain their sovereign power as reserved by the Ninth and Tenth Amendments—their independence as a part and as the source of all government—then the principles underlying the doctrine of separation of powers must be applied to strike down any attempt to control or interfere with the exercise by the people of their governmental functions. The primary function of the people with relation to government is that of expressing their political views, which includes, of necessity, their banding together for political activity. *Ninth and Tenth Amendments to the Constitution of the United States; Yick Wo v. Hopkins*, 118 U. S. 356; *Bridge Co. v. United States*, 105 U. S. 470, 482; *Grosjean v. American Trust Co.*, 297 U. S. 233; *United States v. Cruikshank*, 92 U. S. 542; Patterson, "Free Speech and Free Press", pp. 6-7; Chafee, "Freedom of Speech", 360-61, 234, 350-1, 550 *et seq.*; *Spier v. Baker*, 120 Cal. 370, 379; *O'Donoghue v. United States, supra*, 289 U. S. 516, 531; *Thomas v. Collins, supra*, 323 U. S. 516, 545; *City of Chicago v. Tribune Co.*, 139 N. E. 86, 28 A. L. R. 1368.

What the Committee has done is not only to step out of the area of power delegated to it, but to step into the domain reserved by the people. If this is allowed to continue, the political independence of the people will be no more; government by the people, for the people, of the people will become only an historical phrase.

The fact that the Committee sought to judge and to impose penalties upon petitioner, among which were the destruction of his means of living and of his way of life, brought it into the area of adjudication, an assumption of

power delegated exclusively to the judiciary. *Prentiss v. Atlantic Coast Lines,* 211 U. S. 210; *Kilbourne v. Thompson, supra,* 103 U. S. 168; *Greenfield v. Russell,* 292 Ill. 392, 127 N. E. 102, 9 A. L. R. 1534.

The statute creating the House Committee on Un-American Activities, on its face, and as construed and applied, invades the domain of conscience, belief, and the expression of belief which the Bill of Rights rendered completely free from governmental intervention. Such a trespass cannot be upheld if the concept that ours is government of limited power is to be upheld. *Report on the Virginia Resolutions* (Elliot's Debates, Phil. 1836, 2nd Ed., Vol. IV, p. 569); *Ex parte Milligan,* 4 Wall. (U. S.) 2; Elliot's Debates, *supra,* p. 568; *Kansas v. Colorado,* 206 U. S. 46, 81, 89; *West Va. State Board of Education v. Barnette,* 319 U. S. 624, 636 (1943); *Reynolds v. United States,* 98 U. S. 145, 163 (1879).

A statute such as the one herein involved, which on its face, or as construed and applied, directly or indirectly limits or burdens the free exercise of speech, press, religion, or assembly, violates the First Amendment, regardless of any possible narrow application of the statute in a particular case. *Thornhill v. Alabama,* 310 U. S. 88, 97; *Stromberg v. California,* 285 U. S. 339, 369; *Herndon v. Lowry,* 301 U. S. 242 (1937); *Cantwell v. Connecticut,* 310 U. S. 296 (1940); *Schneider v. Irvington,* 308 U. S. 147 (1930); *Martin v. Struthers,* 319 U. S. 148 (1943).

The salient terms of the said statute, "subversive" and "un-American", are so ambiguous as to render it void as a penal statute. *Connally v. General Construction Co.,* 259 U. S. 385 (1926); *Small Corporation v. American*

Sugar Refining Company, 267 U. S. 231 (1925); *Cline v. Frink Dairy Company,* 166 U. S. 661 (1896); *Lanzetta v. New Jersey,* 306 U. S. 451 (1939); *United States v. Capital Traction Co.,* 34 App. D. C. 592 (1910); *H. Kraus & Brothers, Inc. v. United States,* 327 U. S. 614 (1946); *United States v. Reese,* 92 U. S. 214.

The statute, as applied and construed to require compulsory disclosure, under oath, of an individual's trade union and political affiliation, violates the First Amendment. *Gompers v. Bucks Stove and Range Co.,* 221 U. S. 418; also *Alaska S. S. Co. v. International Longshoremen's Assn.,* 236 Fed. 964, 959, 970 (D. C., W. D., Wash.); *National Labor Relations Board v. Jones & Laughlin Steel Corp.,* 301 U. S. 1, 33, 34; *Texas & N. C. R. Co. v. Railway & S. S. Clerks,* 281 U. S. 548; *Thomas v. Collins,* 65 S. Ct. 315, 324; *Hague v. Committee for Industrial Organization,* 307 U. S. 496; *National Labor Relations Board v. American Pearl Button Co.,* 149 F. 2d 311; *United States v. Ballard,* 322 U. S. 882, 886; *Grosjean v. American Press Co.,* 297 U. S. 233; *Thomas v. Collins,* 65 S. Ct. 315; *Carter v. Carter Coal Co.,* 298 U. S. 237, 287, 288; *United States v. Butler,* 297 U. S. 168; *Bailey v. Drexel Furniture Co.,* 259 U. S. 20; *Linder v. United States,* 268 U. S. 5; *United States v. Butler,* 297 U. S. 168.

All political affiliations and speech, including affiliation with the Communist Party, are protected by the First Amendment. *DeJonge v. Oregon,* 299 U. S. 353; *Herndon v. Lowry,* 301 U. S. 242; *Schneiderman v. United States,* 320 U. S. 118; *Bridges v. Wixon,* 326 U. S. 133 (1945); *Communist Party of America v. Peek,* 20 Cal. 2d 536, 127 P. 2d 889 (1940).

It is petitioner's position that because the Committee trespassed into the area of freedom of speech and of association, there can be *no* justification therefor. Even those who reject that position have never openly contended that there is no limitation upon Congress when it deals with those fundamental rights. Whatever test is applied—whether it be clear and present danger rule, or the really dangerous test of potential danger, it has not been met here. There never has been and is not now anything in the content of motion pictures which by any reasonable definition could be deemed "un-American" or "subversive." Unless the First Amendment no longer is the slightest barrier to the exercise of legislative power, the Committee has exceeded its powers.

Even if the Committee were carrying on an "investigation" concerning private conduct, not protected at all by the First Amendment, the questioning would be pertinent only if it related to information which the Committee did not have. The court erroneously instructed the jury that the question concerning petitioner's political beliefs was pertinent, despite the fact that the Committee believed it had complete information on this subject and that it would not have believed petitioner if his answer had contradicted such information. *People v. Barnes,* 204 N. Y. 125; *Ex parte Hague,* 150 Atl. 322; *People v. Webb,* 5 N. Y. S. 855.

Although the petitioner was charged with refusing to answer a question, the court erroneously instructed the jury that a non-responsive answer or an unclear answer

was sufficient for a finding of guilt. *Kraus v. United States,* 327 U. S. 614; *Shepard v. United States,* 290 U. S. 96; *Ballenbach v. United States,* 326 U. S. 613. Moreover, while the petitioner contended that there had been no refusal to answer, the judge made several prejudicial comments to the effect that the witness was not trying to answer the question. *United States v. Murdock,* 290 U. S. 392; *Quercia v. United States,* 289 U. S. 469; *Ballenbach v. United States,* 326 U. S. 606.

The government failed to establish that the "subcommittee" before which the petitioner testified was a legally constituted body. By the admission, over objection, of conclusions of law as the only evidence on the subject and by the court's instructions that there was testimony from which the jury would find that there was a validly constituted subcommittee, the trial judge determined, as a matter of law and contrary to the law, this question of fact. *Section 409 of the House Rules and Manual,* 80th Cong.; *Section 133(b) of Legislative Reorganization Act of 1946; Section 943 House Rules and Manual,* 80th Cong.; Hines Precedent, Vol. III, Sec. 1754, 1757, 1758; Vol. IV, Sec. 4577; *Penn Co. v. Cole,* 132 Fed. 668; *Brown v. District of Columbia,* 127 U. S. 579.

In determining whether a citation for contempt of one of its committee should be approved, Congress exercises a broad discretion. For that reason, it is required that all of the facts relating to the contempt be submitted to Congress. *In re Chapman,* 166 U. S. 661, 667. The court

erroneously excluded petitioner's evidence that the Committee had not furnished all of the facts to the House preliminary to its vote on the citation.

The defendant was denied a fair trial by reason of the manner of selection and composition of the jury. A test of political orthodoxy, *i. e.,* whether or not the prospective juror had any views opposed to the American form of government, which test is not authorized by statute, was made a condition of jury service. *Gideon v. United States,* 52 F. 2d 427. The jury commissioner arbitrarily and capriciously established standards of "intelligence" other than those provided by law, and applied them in such a manner as to discriminate against those in the lower economic categories. The result was selection of a jury in a manner contrary to law and not calculated to achieve a representative cross-section of the community. *Glasser v. United States,* 315 U. S. 60, 85, 86; *Smith v. Texas,* 311 U. S. 128; *Thiel v. Southern Pacific Co.,* 328 U. S. 217.

With the impact of the Committee's hearings and activities upon government employees, particularly in the light of such highly publicized inquisitions as the Condon affair, it would seem clear that government employees, whose very livelihood might be endangered by incurring the enmity of this Committee, could not sit in this case unafraid, unbiased, and uncoerced. A motion for change of venue, based on the fact that government employees constituted a large percentage of the population and of

al juries in the District of Columbia and that, therefore, a fair trial could not be had, was erroneously denied. *United States v. Woods,* 299 U. S. 122, 148; *Crawford v. United States,* 212 U. S. 193-6; *Frazier v. United States* (Cert. granted April 19, 1948, No. 213 Misc. 92 L. Ed. Adv. Op. 758).

Congressman Thomas, the sole witness for the prosecution, testified on direct examination as to the purpose of the Committee and the pertinency of questions put by it. As to the first matter, the Court cut off cross-examination after only a few questions had been asked; and, as to the second, it cut off cross-examination after a few questions and answers, thus committing prejudicial error. *Arine v. United States,* 10 F. 2d 1778; *Ballenbach v. United States,* 326 U. S. 615; *Alford v. United States,* 282 U. S. 687; *District of Columbia v. Clawson,* 300 U. S. 617.

Other errors are related and incidental to those referred to above. Any one of the points relied on by petitioner is sufficient to require a reversal. Taken together, they establish as gross a miscarriage of justice as has ever been presented to an American Court.

Conclusion.

The constitutional strictures against official declaration of orthodoxy in politics arises from our conception of a democracy. Our Constitution establishes a method by which choice, in those ultimate characteristics which distinguish one government from another, shall remain in the people to be exercised by them subject only to the sanctions which society, as distinguished from government, chooses to impose. When government itself effectively condemns some kinds of choice, when government is empowered to inflict pain for political unorthodoxy, then the institutions do not deserve the name democracy, and to use, then, the epithet tyranny would be merely to anticipate the calendar by a moment, negligible in the history of nations.

Respectfully submitted,

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APPENDIX.

Testimony of John Howard Lawson.

"Mr. Lawson. Mr. Chairman, I have a statement here which I wish to make . . .

"The Chairman. Well, all right; let me see your statement. (Statement handed to the chairman.)

"Mr. Stripling. Do you have a copy of that?

"Mr. Crum. We can get you copies.

"The Chairman. I don't care to read any more of the statement. The statement will not be read. I read the first line.

"Mr. Lawson. You have spent 1 week vilifying me before the American public . . .

"The Chairman. Just a minute . . .

"Mr. Lawson. And you refuse to allow me to make a statement on my rights as an American citizen.

"The Chairman. I refuse you to make the statement, because of the first sentence in your statement. That statement is not pertinent to the inquiry.

"Now, this is a congressional committee—a congressional committee set up by law. We must have orderly procedure, and we are going to have orderly procedure.

"Mr. Stripling, identify the witness.

"Mr. Lawson. The rights of American citizens are important in this room here, and I intend to stand up for those rights, Congressman Thomas.

"Mr. Stripling. Mr. Lawson, will you state your full name please?

"Mr. Lawson. I wish to protest against the unwillingness of this committee to read a statement, when you permitted Mr. Warner, Mr. Mayer, and others to read statements in this room.

"My name is John Howard Lawson.

"Mr. Stripling. What is your present address?

"Mr. Lawson. 9354 Burnett Avenue, San Fernando, Calif.

"Mr. Stripling. When and where were you born?

"Mr. Lawson. New York City.

"Mr. Stripling. What year?

"Mr. Lawson. 1894.

"Mr. Stripling. Give us the exact date.

"Mr. Lawson. September 25.

"Mr. Stripling. Mr. Lawson, you are here in response to a subpena which was served upon you on September 19, 1947; is that true?

"Mr. Lawson. That is correct.

"Mr. Stripling. That subpena called for your appearance before the committee on October 23, at 10:30 a. m.; is that correct?

"Mr. Lawson. That is correct.

"Mr. Stripling. Did you receive the following telegram on October 11, addressed to you, Mr. John Howard Lawson, 9354 Burnett Avenue, San Fernando, Calif.?

"Mr. Lawson. I did.

"Mr. Stripling. I haven't read the telegram yet.

> 'In response to the subpena served upon you summoning you to appear before the Committee on Un-American Activities, United States House of Representatives, in Washington, D. C., on October 23, you are hereby directed to appear on October 27 instead of October 23, at the hour of 10:30 a. m., room 226, Old House Office Building.'

Signed: 'J. Parnell Thomas, chairman.' Did you receive that telegram?

"Mr. Lawson. I did.

"Mr. Stripling. You are here before the committee in response to this subpena and in response to this summons in the form of a telegram from the chairman?

"Mr. Lawson. I am.

"Mr. Stripling. What is your occupation, Mr. Lawson?

"Mr. Lawson. I am a writer.

"Mr. Stripling. How long have you been a writer?

"Mr. Lawson. All my life—at least 35 years—my adult life.

"Mr. Stripling. Are you a member of the Screen Writers Guild?

"Mr. Lawson. The raising of any question here in regard to membership, political beliefs, or affiliation * * *

"Mr. Stripling. Mr. Chairman * * *

"Mr. Lawson. Is absolutely beyond the powers of this committee.

"Mr. Stripling. Mr. Chairman * * *

"Mr. Lawson. But * * *

(The chairman pounding gavel.)

"Mr. Lawson. It is a matter of public record that I am a member of the Screen Writers Guild.

"Mr. Stripling. I ask * * *

[Applause.]

"The Chairman. I want to caution the people in the audience: You are the guests of this committee and you will have to maintain order at all times. I do not care for any applause or any demonstrations of one kind or another.

"Mr. Stripling. Now, Mr. Chairman, I am also going to request that you instruct the witness to be responsive to the questions.

"The Chairman. I think the witness will be more responsive to the questions.

"Mr. Lawson. Mr. Chairman, you permitted * * *

"The Chairman (pounding gavel). Never mind * * *

"Mr. Lawson (continuing). Witnesses in this room to make answers of three or four or five hundred words to questions here.

"The Chairman. Mr. Lawson, you will please be responsive to these questions and not continue to try to disrupt these hearings.

"Mr. Lawson. I am not on trial here, Mr. Chairman. This committee is on trial here before the American people. Let us get that straight.

"The Chairman. We don't want you to be on trial.

"Mr. Stripling. Mr. Lawson, how long have you been a member of the Screen Writers Guild?

"Mr. Lawson. Since it was founded in its present form, in 1933.

"Mr. Stripling. Have you ever held any office in the guild?

"Mr. Lawson. The question of whether I have held office is also a question which is beyond the purview of this committee.

(The chairman pounding gavel.)

"Mr. Lawson. It is an invasion of the right of association under the Bill of Rights of this country.

"The Chairman. Please be responsive to the question.

"Mr. Lawson. It is also a matter * * *

(The chairman pounding gavel.)

"Mr. Lawson. Of public record * * *

"The Chairman. You asked to be heard. Through your attorney, you asked to be heard, and we want you to be heard. And if you don't care to be heard, then we will excuse you and we will put the record in without your answers.

"Mr. Lawson. I wish to frame my own answers to your questions, Mr. Chairman, and I intend to do so.

"The Chairman. And you will be responsive to the questions or you will be excused from the witness stand.

"Mr. Lawson. I will frame my own answers, Mr. Chairman.

"The Chairman. Go ahead, Mr. Stripling.

"Mr. Stripling. I repeat the question, Mr. Lawson: Have you ever held any position in the Screen Writers Guild?

"Mr. Lawson. I stated that it is outside the purview of the rights of this committee to inquire into any form of association * * *

"The Chairman. The Chair will determine what is in the purview of this committee.

"Mr. Lawson. My rights as an American citizen are no less than the responsibilities of this committee of Congress.

"The Chairman. Now, you are just making a big scene for yourself and getting all 'het up'. [Laughter.] Be responsive to the questioning, just the same as all the witnesses have. You are no different from the rest. Go ahead, Mr. Stripling.

"Mr. Lawson. I am being treated differently from the rest.

"The Chairman. You are not being treated differently.

"Mr. Lawson. Other witnesses have made statements, which included quotations from books, references to ma-

terial which had no connection whatsoever with the interest of this committee.

"The Chairman. We will determine whether it has connection. Now, you go ahead * * *

"Mr. Lawson. It is absolutely beyond the power of this committee to inquire into my association in any organization.

"The Chairman. Mr. Lawson, you will have to stop or you will leave the witness stand. And you will leave the witness stand because you are in contempt. That is why you will leave the witness stand. And if you are just trying to force me to put you in contempt, you won't have to try much harder. You know what has happened to a lot of people that have been in contempt of this committee this year, don't you?

"Mr. Lawson. I am glad you have made it perfectly clear that you are going to threaten and intimidate the witnesses, Mr. Chairman.

(The chairman pounding gavel.)

"Mr. Stripling. Mr. Lawson, I repeat the question. Have you ever held any position in the Screen Writers Guild?

"Mr. Lawson. I have stated that the question is illegal. But it is a matter of public record that I have held many offices in the Screen Writers Guild. I was its first president, in 1933, and I have held office on the board of directors of the Screen Writers Guild at other times.

"Mr. Stripling. You have been employed in the motion-picture industry; have you not?

"Mr. Lawson. I have.

"Mr. Stripling. Would you state some of the studios where you have been employed?

"Mr. Lawson. Practically all of the studios, all the major studios.

"Mr. Stripling. As a screen writer?

"Mr. Lawson. That is correct.

"Mr. Stripling. Would you list some of the pictures which you have written the script for?

"Mr. Lawson. I must state again that you are now inquiring into the freedom of press and communications, over which you have no control whatsoever. You don't have to bring me here 3,000 miles to find out what pictures I have written. The pictures that I have written are very well known. They are such pictures as Action in the North Atlantic, Sahara * * *

"Mr. Stripling. Mr. Lawson * * *

"Mr. Lawson. Such pictures as Blockade, of which I am very proud and in which I introduced the danger that this democracy faced from the attempt to destroy democracy in Spain in 1937. Those matters are all matters of public record.

"Mr. Stripling. Mr. Lawson, would you object if I read a list of the pictures, and then you can either state whether or not you did write the scripts?

"Mr. Lawson. I have no objection at all.

"Mr. Stripling. Did you write Dynamite, by M-G-M?

"Mr. Lawson. I preface my answer, again, by saying that it is outside the province of this committee, but it is well known that I did.

"Mr. Stripling. The Sea Bat, by M-G-M?

"Mr. Lawson. It is well known that I did.

"Mr. Stripling. Success at Any Price, RKO?

"Mr. Lawson. Yes; that is from a play of mine, Success Story.

"Mr. Stripling. Party Wire, Columbia?

"Mr. Lawson. Yes; I did.

"Mr. Stripling. Blockade, United Artists, Wanger?

"Mr. Lawson. That is correct.

"Mr. Stripling. Algiers, United Artists, Wanger?

"Mr. Lawson. Correct.

"Mr. Stripling. Earth Bound, Twentieth Centry Fox.

"Mr. Lawson. Correct.

"Mr. Stripling. Counterattack, Columbia.

"Mr. Lawson. Correct.

"Mr. Stripling. You have probably written others; have you not, Mr. Lawson?

"Mr. Lawson. Many others. You have missed a lot of them.

"Mr. Stripling. You don't care to furnish them to the committee, do you.

"Mr. Lawson. Not in the least interested.

"Mr. Stripling. Mr. Lawson, are you now, or have you ever been a member of the Communist Party of the United States?

"Mr. Lawson. In framing my answer to that question I must emphasize the points that I have raised before. The question of communism is in no way related to this inquiry, which is an attempt to get control of the screen and to invade the basic rights of American citizens in all fields.

"Mr. McDowell. Now, I must object * * *

"Mr. Stripling. Mr. Chairman * * *

(The chairman pounding gavel.)

"Mr. Lawson. The question here relates not only to the question of my membership in any political organization, but this committee is attempting to establish the right * * *

(The chairman pounding gavel.)

"Mr. Lawson (continuing). Which has been historically denied to any committee of this sort, to invade the rights and privileges and immunity of American citizens, whether they be Protestant, Methodist, Jewish, or Catholic,

whether they be Republicans or Democrats or anything else.

"The Chairman (pounding gavel). Mr. Lawson, just quiet down again.

"Mr. Lawson, the most pertinent question that we can ask is whether or not you have ever been a member of the Communist Party. Now, do you care to answer that question?

"Mr. Lawson. You are using the old technique, which was used in Hitler Germany in order to create a scare here * * *

"The Chairman (pounding gavel). Oh * * *

"Mr. Lawson. In order to create an entirely false atmosphere in which this hearing is conducted * * *

(The chairman pounding gavel.)

"Mr. Lawson. In order that you can then smear the motion-picture industry, and you can proceed to the press, to any form of communication in this country.

"The Chairman. You have learned * * *

"Mr. Lawson. The Bill of Rights was established precisely to prevent the operation of any committee which could invade the basic rights of Americans.

Now, if you want to know * * *

"Mr. Stripling. Mr. Chairman, the witness is not answering the question.

"Mr. Lawson. If yon want to know * * *

(The chairman pounding gavel.)

"Mr. Lawson. About the perjury that has been committed here and the perjury that is planned.

"The Chairman. Mr. Lawson * * *

"Mr. Lawson. You permit me and my attorneys to bring in here the witnesses that testified last week and you permit us to cross-examine these witnesses, and we will show up the whole tissue of lie * * *

"The Chairman (pounding gavel). We are going to get the answer to that question if we have to stay here for a week. Are you a member of the Communist Party, or have you ever been a member of the Communist Party?

"Mr. Lawson. It is unfortunate and tragic that I have to teach this committee the basic principles of American * * *

"The Chairman (pounding gavel). That is not the question. That is not the question. The question is: Have you ever been a member of the Communist Party?

"Mr. Lawson. I am framing my answer in the only way in which any American citizen can frame his answer to a question which absolutely invades his rights.

"The Chairman. Then you refuse to answer that questions; is that correct?

"Mr. Lawson. I have told you that I will offer my beliefs, affiliations, and everything else to the American public, and they will know where I stand.

"The Chairman (pounding gavel). Excuse the witness * * *

"Mr. Lawson. As they do from what I have written.

"The Chairman (pounding gavel). Stand away from the stand * * *

"Mr. Lawson. I have written Americanism for many years, and I shall continue to fight for the Bill of Rights, which you are trying to destroy.

"The Chairman. Officers, take this man away from the stand * * *

[Applause and boos.]"

Communism in Motion Picture Industry (Hearings Regarding the Communist Infiltration of the Motion Picture Industry), pp. 290-95, incl. (J A 188-197).

STATUTES INVOLVED.

(1) Sec. 121(q)(1), Legislative Reorganization Act of 1946, P. L. CO1, c. 753, 79th Cong., 2d Sess., CO Stat. 828:

The Committee on Un-American Activities as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpoenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman and may be served by any person designated by any such chairman or member.

(2) Rev. Stats., Sec. 102, as amended by c. 594, Act of June 22, 1938, 52 Stat. 942, U.S.C., Title 2, Sec. 192:

Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

On January 3, 1947, the House of Representatives by resolution (H. Res. 5) adopted as the rules of the House "all applicable provisions of the Legislative Reorganization Act of 1946" and the rules of the House of Representatives of the Seventy-ninth Congress as the rules of the House of the Eightieth Congress (93 Cong. Rec. 36).

Title 11, Section 14, of the Code for the District of Columbia:

"No person shall be competent to act as a juror unless he be a citizen of the United States, a resident of the District of Columbia, over twenty-one and under sixty-five years of age, able to read and write and to understand the English language, and a good and lawful person, who has never been convicted of a felony or a misdemeanor involving moral turpitude."

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 334

JOHN HOWARD LAWSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The petition for a writ of certiorari asks the Court to review a criminal case pending on appeal in the Court of Appeals for the District of Columbia prior to rendition of judgment by that court, as authorized by 28 U. S. C. 1254 (1) (Pet. 9). The Government opposes the granting of the petition on the ground that this is not a case warranting such "extraordinary" action (*Hamilton Shoe Co.* v. *Wolf Brothers*, 240 U. S. 251, 258), for the following reasons:

Petitioner was indicted in the District Court for the District of Columbia for refusing, in violation

of 2 U. S. C. (1946 ed.) 192, to answer a pertinent question put to him as a witness before the Committee on Un-American Activities of the House of Representatives, to wit, whether he was or had ever been a member of the Communist Party (R. 9–10).[1] He was found guilty following a jury trial (R. 43), and on May 21, 1948, was sentenced to imprisonment for one year and to pay a fine of $1,000 (R. 44). He filed a notice of appeal on the same day (R. 2), and was permitted to remain at liberty under bond pending appeal (R. 44).

On June 28, 1948, upon the request of the clerk of the District Court, and pursuant to stipulation between counsel for petitioner and the Government, the time for filing the designation of the record on appeal and for the clerk to transfer the original exhibits to the Court of Appeals was extended to July 28, 1948 (R. 53–54);[2] the record was filed in the Court of Appeals on that date.

It appears from record papers subsequently filed in the Court of Appeals, which are not contained in the printed joint appendix, that on August 17, 1948, counsel for petitioner filed a motion to extend the time for filing his brief and the

[1] Our designation "R." refers to the joint appendix printed for use in the Court of Appeals, copies of which have been filed by petitioner in this Court (see Pet. 1, note).

[2] Rule 39 (c), F. R. Crim P., provides that "the record on appeal shall be filed with the appellate court and the proceeding there docketed within 40 days from the date the notice of appeal is filed," but the time for filing and docketing may be extended.

printed transcript of record to and including September 30, 1948.[3] In support of the motion it was alleged that counsel were scrutinizing the record to determine which parts should be printed, that it would be necessary to print a substantial portion of the record, and that the pressure of other legal work and commitments during July and August had made it difficult for counsel for petitioner to devote to the preparation of the brief the amount of time the case deserved. Counsel for the Government endorsed the motion "no objection," and it was granted on August 21, 1948, the Court of Appeals at the same time, pursuant to the motion, extending the Government's time to file its brief to October 30, 1948. Thereafter, on September 22, 1948, counsel for petitioner moved the Court of Appeals to grant a further extension of the time for filing his brief to and including October 30, 1948. In this motion it was stated that petitioner's attorneys had "completed the writing and preparation of the appellant's opening brief and the same is ready to be transmitted to the printer for printing, as soon as the Joint

[3] Under Rule 17 of the Court of Appeals the record is not required to be printed except upon order of the court, but the parties must print as appendices to their briefs such parts of the record as they desire the court to read. Rule 18 requires the appellant's brief in a criminal case to be filed within 25 days after the filing of the record, but allows him to September 1 to file his brief if the 25-day period expires in July or August. The appellee's brief is required to be filed within 25 days after the filing of the appellant's.

Appendix is received, and the necessary page references inserted." The Government, on September 28, 1948, opposed the request for an extension of time to October 30, 1948, but stated it had no objection to an extension to October 15, 1948, explaining that it had been informed by the printer that the page proof of the joint appendix would be completed on September 29, 1948. On October 2, 1948, before the Court of Appeals had acted on this motion, the petition for a writ of certiorari, together with the joint appendix, was filed in this Court.

It thus appears that petitioner's brief in the Court of Appeals and the joint appendix which is to constitute the printed record in that court have been completed, and that, except for the filing of the Government's brief, nothing more remains to be done to delay prompt and orderly consideration of the case by the Court of Appeals. We submit, therefore, that the normal course of awaiting decision by the Court of Appeals before requesting this Court to review the case on writ of certiorari should here be followed. Petitioner is not in custody, but at liberty on bail. Full consideration by the Court of Appeals of the questions presented and rendition of judgment by that court will help towards crystallizing the issues involved and will aid this Court in determining whether the granting of certiorari is warranted. While the case may present important issues concerning civil liberties of citizens, as petitioner

contends (Pet. 9–13), we submit that they are manifestly not of such transcendent public importance and interest as to require the immediate attention of this Court (cf. *United States* v. *Mine Workers,* 330 U. S. 258, 269; *Ex parte Quirin,* 317 U. S. 1, 20–21).

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied. If, however, the Court should feel that the petition should be considered on its merits, the Government requests that it be given an opportunity to file a further brief in reply to the petition.

PHILIP B. PERLMAN,
Solicitor General.

OCTOBER 1948.

U. S. GOVERNMENT PRINTING OFFICE: 1948

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 334

JOHN HOWARD LAWSON, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

AMICUS CURIAE BRIEF OF THE NATIONAL LAWYERS GUILD ON PETITION FOR WRIT OF CERTIORARI.

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JOHN HOWARD LAWSON, *Petitioner*,

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AMICUS CURIAE BRIEF OF THE NATIONAL LAWYERS GUILD ON PETITION FOR WRIT OF CERTIORARI.

STATEMENT.

The National Lawyers Guild is a national association of members of the bar having chapters throughout the United States. Important among its objectives is protecting and fostering the civil rights and liberties of the people and to that end the Guild has participated frequently in proceedings involving basic human rights. Its goal has consistently been to support a resolution of conflicts in the field of civil rights and liberties in the spirit and within the meaning and intent of the Bill of Rights as applied to concrete problems of our times.

The issues in this proceeding, the Guild is convinced, typify and embody the essential characteristics of a rapidly growing technique of repression gravely threatening free-

dom of speech in the field of political philosophy. This Court will take judicial notice of the controversy involving political ideologies now raging not only in our own country but throughout the world. This conflict is not dissimilar to that which rocked the civilized world at the time of the formation of our own Republic. While it is clearly not the function of this Court to sit in judgment on political issues, under our Constitution, it is charged with the responsibility of preserving the constitutional climate in which the people themselves may be free to decide such issues. It has been repeatedly pointed out by this Court that any attempt by government or its agencies to stifle free and open discussion or free communication of the tenets of these conflicting political philosophies is a forbidden invasion of the peoples' right to hear as well as an abridgment of the personal liberty of the proponents. *DeJonge* v. *Oregon*, 299 U. S. 353; *Schneiderman* v. *United States*, 320 U. S. 118; *Bridges* v. *Wixon*, 326 U. S. 135.

The precise question raising the issues to be discussed herein, was whether petitioner was or ever had been a member of the Communist Party. Otherwise stated, petitioner was asked to disclose his political affiliation. For refusing to answer this question, relying upon constitutional grounds. witnesses subpoenaed to appear before Federal and State legislative committees, grand juries and other governmental bodies have been sent to jail and in some cases denied bail on the assumption that the First Amendment afforded no protection against self disclosure of one's political affiliation. A great many more of such witnesses are being threatened with prosecution.

If this assumption is in error many people have been illegally denied their constitutional rights and deprived of their liberty and it is a fair supposition that unless the error is corrected many others will be similarly dealt with. The practice of asking questions concerning political affiliation has become widespread and is being used extensively not only by the Un-American Activities Committee of the

House, but by a subcommittee of the House Committee on Education and Labor, various state legislative committees patterned on the Un-American Activities Committee of the House, and United States Attorneys in charge of federal grand jury proceedings. Recently five individuals were sentenced to jail without bail by the Denver, Colorado, U. S. District Court for failure to answer questions bearing upon their political affiliation and on October 25, 1948, ten witnesses were committed to jail by the U. S. District Court in Los Angeles, California, for refusing to answer similar questions. (The Evening Star, Washington, D. C., October 26, 1948.)

The matter is therefore one of impelling urgency calling for an immediate clarifying decision on this vital issue lest large numbers of people be deprived of their liberty through denial of their constitutional rights without effective means of speedy redress. It is earnestly submitted that this Court should exercise its power of review in this case so that people may know where they stand under the Constitution with respect to their political rights.

JURISDICTION.

This Court has jurisdiction to grant writ of certiorari herein by virtue of Title 28, United States Code, Section 1254 (1).

QUESTION PRESENTED.

It is the purpose of this brief to discuss the single question of whether petitioner was protected against answering a question as to whether he was then or ever had been a member of the Communist Party by the provisions of the First Amendment of the United States Constitution. In discussing this question, emphasis will be placed on the right to silence as a correlative of freedom of speech.

In selecting this issue for discussion there is no intent to minimize the other issues raised and discussed in petitioner's brief in support of his petition to this Court for writ of certiorari.

ARGUMENT.

Was Petitioner Protected Against Disclosure of His Political Affiliation by the First Amendment?

The precise question under consideration here does not directly involve the positive aspects of the free speech and assembly guarantees but rather the correlative right of silence upon subjects falling within the protection of the First Amendment. There is, it must be admitted little if any direct authority upon the right of silence but, as will be shown, recognition of this right has underlain many decisions of this Court involving the positive aspects of free speech and assembly. Its emergence as a logical and necessary component of the constitutional guarantees referred to has been foreshadowed in other decisions involving cognate rights.

It is clear that free speech must be related to the circumstances and conditions under which it is exercised to be understood. It obviously does not exist in vacuum. Indispensable to the enjoyment of free speech is at least one listener and this necessarily involves the association of two or more persons. Hence, it follows that freedom of association is essential to the exercise of the right of free speech. Indeed freedom of association bridges the gap between unorganized and perhaps informal discussion and the more formal and often purposeful assembly.

Freedom of association is a basic reality of our times. The constitutions of over thirty countries, including postwar France (New York Times, Oct. 1, 1946 at 16c) and postwar Japan (New York Times, March 9, 1946 at 6), express world-wide recognition of this essential freedom. In none of these countries has this right been more valued and protected *in practice* than in the United States.

While "freedom of association" is not expressly mentioned in our Constitution and it is true that this Court has not yet found occasion to assert this right *eo nomine* as the

basis for any of its decisions, it is believed that this evidences no intent to deny the existence of the right but rather a tacit acceptance of the fact that it is implicit in the very concepts of free speech and assembly. No other explanation reconciles with the common experience and practice of people living in a democracy. It is the studied conclusion of two distinguished scholars that freedom of association is deeply rooted in American Society. (James Bryce, American Commonwealth, vol. 2, p. 282, 1924; Gunnar Myrdal, An American Dilemma, vol 2, p. 952, 1944.) In *Whitney* v. *California*, 274 U. S. 357, 371, this Court seems to have recognized the right of association as cognate to those expressed in the first Amendment in the following language: "Nor is the syndicalism act as applied in this case repugnant to the due process clause as a restraint on the right of free speech, assembly and association."

To find, therefore, the right of association implicit in the First Amendment does no violence to either the language or intent of that provision but rather rounds out and completes the necessary implications of the guarantees of free speech and assembly. For the purpose of this analysis, it is believed accurate to consider the right of free speech as the right to communicate ideas to others. The right of assembly effectuates the results of such communication by relating them to groups rather than to individuals. Without the right of association and assembly, freedom of speech could result only in useless and chaotic verbalism and the desirable democratic objectives sought to be gained by freedom of speech and assembly would be lost.

The Right of Silence.

Acceptance of the foregoing conclusions leads to a consideration of the right of silence. In approaching this subject it is recognized that decision as to the existence or nonexistence of the right may turn upon the adoption of one or the other of two different views concerning the relationship between the government and the people. Accord-

ing to the first view, the government stands above and is superior to the people and the latter's rights are subordinate to and limited by the "natural" prerogatives of the former. This is the authoritarian view. The opposite attitude holds that government occupies a subordinate position as agent and servant of the people possessing only such rights as the people choose to surrender to it. The first view is exemplified by Alexander Hamilton's characterization of the people ("The people, Sir, is a beast") and the second by the words of Thomas Jefferson:

> "Men, by their constitution, are naturally divided into two parties: 1—Those who fear and distrust the people and wish to draw all power from them into the hands of the higher classes. 2—Those who identify themselves with the people, have confidence in them, cherish and consider them as the most honest and safe, although not the most wise, depository of the public interests."

Returning to consideration of the right of silence, this Court expressly recognized that the right of free speech included the corresponding right of silence in *West Virginia State Board of Education* v. *Barnette*, 319 U. S. at 645, in stating that the right of free speech

> "includes both the right to speak freely and the *right to refrain from speaking at all*, except in so far as essential operation of government may require it for the preservation of an orderly society—as in the case of compulsion to give evidence in court."

The right of silence is formulated in 11 Am. Jur. 1109, 1110, in the following language:

> "The liberty to write or speak includes the corresponding right to be silent and also the liberty to decline to write, and such rights, as well as the right to privacy, or the right to speak only when one may speak freely, are insured under this constitutional provision."

See also *Wallace* v. *Ry. Co.*, 94 Ga. 732; *St. Louis Southwestern Ry. Co.* v. *Griffin*, 106 Tex. 477; *Prudential Ins. Co.* v. *Cheek*, 259 U. S. 530 at 538, 543; *Ex parte Re Harrison*, 212 Mo. 88, 110 S. W. 709.

It cannot be denied that the right of silence has been recognized and protected on subjects closely allied to the ones under consideration. Thus it seems clear that in the United States one's religious beliefs and opinions are protected against self-disclosure. *Searcy* v. *Miller*, 57 Ia. 613, 10 N. W. 912; *Dedric* v. *Hopson*, 62 Ia. 562, 17 N. W. 772; *Com.* v. *Smith*, 2 Gray (Mass.) 516; *Com.* v. *Burke*, 16 Gray 33. Cf. *United States* v. *Ballard*, 322 U. S. 78 at page 86, in which the following language appears: "Men may believe what they cannot prove. They may not be put to proof of their religious doctrines or beliefs."

Closely analogous to the right of silence is the right of privacy or, as it has been described "the right to be left alone," which was clearly stated by Brandeis, J., in *Olmstead* v. *United States*, 277 U. S. 438, at page 478, as follows:

> "The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfaction in life are to be found in material things. They sought to protect Americans in their beliefs, their emotions and their sensations. They conferred, as against the Government, *the right to be left alone*—the most comprehensive right and the right most valued by civilized man. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, by whatever the means employed, must be deemed a violation of the Fourth Amendment."

Recognition and acceptance of the proposition that the right of free speech includes within it the corresponding right to refrain from speaking at all is a logical and natural step in the process of defining the concept of free speech

and revealing its scope and necessary implications. Analogously, freedom to contract includes the right to refrain from contracting; the right of assembly implies the opposite right to refrain from assembling; and the right to worship, by necessary implication, gives one the right not to worship. Were such not the case, freedoms would become duties instead of rights and privileges and the contemplated benefits of the constitutional guarantees would become meaningless.

An application of the right to remain silent as to ones political affiliation is to be found in our traditional secrecy of the ballot. Justice Cooley commented on this subject as follows:

> "The mode of voting in this country at all general elections is almost universally by ballot. * * * The distinguishing feature of this mode of voting is, that every voter is thus enabled to secure and preserve the most complete and inviolable secrecy in regard to the persons for whom he votes, and thus escape the influences which, under the system of oral suffrage, may be brought to bear upon him with a view to overbear and intimidate and thus prevent the real expression of public sentiment.
>
> • • • • • • • • • •
>
> "The system of ballot-voting rests upon the idea that every elector is to be entirely at liberty to vote for whom he pleases and with what party he pleases, and that no one is to have the right or be in a position to question his independent action either then or at any subsequent time."
>
> 2 Cooley's Constitutional Limitations, 8th Ed. pp. 1373, 1376. See also *Commonwealth* v. *Gibbs*, 3 Yeats (Pa.) 429.

Were voters not protected against self-disclosure of their political affiliations, the secrecy deemed essential to the effective use of the ballot would be greatly impaired if not wholly destroyed. If it be conceded that petitioner could not be interrogated as to his party affiliation as a condition precedent to exercising his right to vote, it follows that the

committee had no greater right to inquire on the subject than would an election inspector. Any other decision on this point would open the door to the evils sought to be forestalled by our free elective system and result in the disintegration of a process considered indispensable to the maintenance of our democratic way of life. For if the question may be asked of a member of one political party, it necessarily follows that it may be asked of any member of any political party. Our law recognizes no distinction between the parties. All are equal before the law.

To hold that petitioner should have answered the committee's question as to membership in the Communist Party on the ground that it was merely a "preliminary" interrogation or a means of identification (See *Thomas* v. *Collins*, 323 U. S. 516 for a similar contention) is not only to beg the question but to lose sight of the basic issues raised by the question and the realities of the situation with which the witness was confronted.

The legal issue raised by the propounded question is whether petitioner had a constitutional right to remain silent as to his party affiliation. Conceding that certain narrow limitations may be imposed upon this right when such limitation is shown to be essential to the operation of government, *West Virginia State Board of Education* v. *Barnette*, supra, the area of limitation cannot be measured by discretion and cannot undermine the constitutional guarantee against abridgment of free speech and free assembly. It must not be forgotten that the prohibition against abridgment of these basic rights is stated in unqualified terms, *Bridges* v. *California*, 314 U. S. 252, and that these guaranteed freedoms stand in a preferred position, *Follett* v. *Town of McCormick*, 321 U. S. 573; *March* v. *Alabama*, 326 U. S. 501. See also Free Speech and its Relation to Self-Government, pp. 16-19, Alexander Meiklejohn, Harper & Bros. 1948.

With respect to the realities of the situation, the need for the protection afforded by the right of silence is empha-

sized by the well-known consequences following self-disclosure of affiliation with an unpopular group or organization. The practical consequences range all the way from bitter criticism to physical violence and even death. Common among such consequences are loss of employment, social ostracism and various forms of assault. No one will deny that in many circumstances, in addition to membership in the Communist Party, anonymity is essential both to the safety of the individual and the success of programs designed to bring about changes in our social or economic systems through permissible activities within the framework of the First Amendment. Examples of such situations are: membership in the National Association for the Advancement of Colored People in certain sections of the South; affiliation with a new political party (e.g. The Progressive Party) in regions where its announced policies or objectives are violently opposed; membership in trade unions in sections of the country where workers are largely unorganized; membership in organizations denying the theory of white supremacy in certain sections of the South. To compel individuals to disclose affiliation under such circumstances is to impose an effective restraint on the ultimate benefits intended to be realized through free trade in ideas. After forced disclosure, the right of free speech exists only as an abstraction. A witness exposed to the hazards mentioned, in obedience to the most elementary laws of nature would thenceforth be inclined to dissociate from his chosen group and hold his tongue on controversial subjects. Only the very brave or the very ignorant would be undeterred from further efforts. To make extraordinary courage a condition precedent to the exercise of basic civil rights is equivalent to withholding them from all but exceptional people. Moreover the restraining effects of forced disclosure would reach out beyond the individual to others associated with unpopular causes or groups and effectively inhibit further activities in the field of civil rights.

No more effective means can be conceived of stifling the rights of free speech, association, and assembly by minority groups than by exposing its members to the censure and even violence of a pre-conditioned public hostility. No doubt this is the precise purpose intended to be served by the inquiry made in the instant case. Indeed, there is evidence in the record to show that the purpose was to secure the discharge of petitioner from his employment.

It should be noted also that the right of silence contains none of the implications inherent in the positive aspects of free speech. The famous analogy of Justice Holmes of falsely shouting fire in a theatre has no application here. Restrictions on the right if any be permitted, must of necessity be narrowly circumscribed and limited to concrete situations in which it appears conclusively that unless a particular answer is compelled, the operation of the state's essential functions will be prevented. Any other evaluation of the right of silence would be to deny its substance, together with other basic human rights, which stand in a privileged position even as against the government. *Olmstead* v. *United States, supra.*

It is submitted, therefore, that the obverse of the coin of free speech is the right to refrain from speaking at all, a right which resides in the concept of freedom of speech as a logical and necessary component thereof. The two rights constitute a single unity and in marking out the metes and bounds of the territory in which they are free to operate, any line drawn to designate permissible limits thereof must have as its benchmark the constitutional mandate forbidding abridgment of the freedoms guaranteed by the First Amendment.

> "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system."
>
> *Stromberg* v. *California,* 283 U. S. at 369.

CONCLUSION.

The issues raised in this proceeding penetrate to the very roots of our democratic way of life and decision thereon may well mark a milestone in our constitutional history. The opportunity here presented to clarify basic rights and bring about a better and firmer relationship between our government and the people is very great. The National Lawyers Guild is proud to have the opportunity to contribute its part towards a democratic solution.

Respectfully submitted,

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